AF.R.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A.No.150 **सन्** 2003

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	APPELLANT: CLAIMANT	Netram Sahu, S/o Ram Singh alias Ramsingh Sahu, aged about 44 years, Resident of Village-Gainjee, P.S. Lalpur, District-Bilaspur.
		VERSUS
	RESPONDENTS:	1. Mukesh Isayee, S/o Silloo Isayee, aged 34 years, Resident of Bade Barela, P.S. Jarhagaon, District-Bilaspur (C.G.) 2. Laxmi Chand Sachdeva, S/o Khemchand Sachdeva, Resident of Main-Road Takhatpur, P.S. Takhatpur, District-Bilaspur 3. The New India Insurance Co. Ltd., Through its Branch Manager, Branch Office, Rajendra Nagar Chowk, Tahsil and District-Bilaspur.
	Present:- Shri Anil Pandey, counsel for the appellant Shri Anand Kumar Gupta, counsel for the respondent No.3	
	ORAL ORDER (Passed on 20.03.2007)	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The claimant has preferred this appeal under Section 173 of the M.V. Act being aggrieved by the award dated 24th October 2002 passed by the 5th Additional Motor Accident Claims Tribunal, Bilaspur in claim case No.127/2001 whereby learned Tribunal has awarded an amount of Rs.1,20,000/- against permanent disability, Rs.10,000/- for medical expenses, Rs.10,000/- for mental agony, thereby in all an amount of Rs.1,40,000/- has been awarded against respondent No.3.

Case of the claimant was that on 9-5-2001 he boarded the mini bus bearing registration No. M.P.-26-C/5638 at Bilaspur for going to his village. Respondent No.1 herein was driver of the said bus whereas, respondent No.2 was the owner of the bus. Respondent No.1 started driving the bus at a very high speed, in rash and negligent manner, he dashed the bus against a tree standing on the right side of the road near village Jorapara. As a result of that accident, the claimant sustained fracture injury on his right hand. He was admitted to the hospital. During treatment, his right hand was amputed, therefore, he has suffered permanent disability and he is not able to perform his duties. The claimant was working as carpenter whereby he used to earn Rs.100/- per

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

day, Rs.3,000/- per month. Therefore, he is entitled for the claim of Rs.8,85,000/- & 15% interest thereon. Parties were allowed to adduce their evidence. Vide impugned award learned Tribunal after scrutinizing evidence reached to the conclusion that it is admitted that right hand of the claimant has been amputed but even then he might be earning something, therefore, based on that it is appropriate to assess loss of Rs.1,500/- per month. After incurring expenses for his personal livelihood he might be spending Rs.1,000/- per month on his family. The age of the claimant at the time of accident was 42 years. Normal expected age of a person is 60-65 years, therefore, by applying multiplier of 10 Tribunal has awarded the compensation of Rs.1,20,000/-.

Learned counsel for the claimant/appellant argued that in the first instance when the age of the claimant was 42 years at the time of the accident, learned Tribunal ought to have applied multiplier of 15 as per Schedule annexed with the M.V. Act, 1988. Second argument of learned counsel for the claimant/appellant was that in this case, claimant is still alive, therefore, it was not appropriate for the Tribunal to deduct one third of the income of the claimant, that can be deducted only in the case of death of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

bread earner and claim is filed by dependent family members. Third argument of learned counsel for the claimant/appellant was that finding of the Tribunal that even after amputation of his right hand he might be earning something is not based on sound reasoning. The right hand of the claimant has been amputed, therefore, he has suffered permanent disability and he is not able to do his carpentry work.

On the other hand, learned counsel for the respondent No.3 supported the award passed by the Tribunal.

The Tribunal has reached to the conclusion that age of the claimant was 42 years at the time of the accident, same has not been disputed by learned counsel for the respondent No.3. Therefore, learned Tribunal has incorrectly applied multiplier of 10, instead of that, as per Schedule, multiplier of 15 ought to have been applied.

Finding of the Tribunal that even after amputation of the right hand claimant might be earning something is also not based on any sound reasoning or evidence because claimant in para-7 of his evidence has categorically stated that after amputation of his

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

right hand he is not able to do any work. When the claimant's right hand has been amputed, therefore, it cannot be expected that he is capable to do his carpentry work. In cross-examination, he has stated that he is not doing carpentry work after amputation of his right hand. Therefore, conclusion of the Tribunal is incorrect. Claimant has suffered permanent disability, therefore, he is entitled for full claim which he was earning at the time of the accident. For this, I am fortified in my view by the judgment of the Apex Court in the matter of **Pratap Narain Singh Deo V. Shrinivas Sabata & another** reported in **AIR 1976 SC 222** in which the Apex Court held that carpenter sustained personal injury in the course of employment, amputation of left arm from the elbow, since carpenter cannot work with one hand, disablement is total and not partial.

Now coming to the earning, claimant has stated that he was doing work of carpentry. He used to earn Rs.100/- per day. He has further stated that he was doing carpentry work at his residence at his village. It is common knowledge that in village side it is difficult to get work for all the days in a month. Normally, in the village side carpenters can have work hardly for 20 days in a

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

month, therefore, in all probability, claimant might be earning Rs.2,000/- per month, as such, his loss of income is assessed at Rs.2,000/- per month.

For the foregoing reasons, claimant is entitled for a claim of Rs.3,60,000/- i.e. Rs.2,000/- x 12 x 15 which comes to Rs.3,60,000/- as against above claim of the claimant. Learned Tribunal has already awarded Rs.1,20,000/-, therefore, claimant is entitled for Rs.2,40,000/- in addition to what has been awarded.

In the result, the appeal is allowed. Respondent No.3 is directed to pay Rs.2,40,000/- more in addition to the amount awarded by the Tribunal. Claimant shall be entitled for interest at the rate of 9% on Rs.2,40,000/- from the date of the application.

Sd/-
L.C.BHADOO
Judge

Barve

24.3.08 28.3.08 28/4/11

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